

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF INDIANA  
NEW ALBANY DIVISION

IN RE: )  
 )  
EASTERN LIVESTOCK CO., LLC ) CASE NO. 10-93904-BHL-11  
 )  
Debtor. )

TRUSTEE'S MOTION TO CONTINUE HEARING AND ESTABLISH MEDIATION  
PROTOCOL ON THE PROPOSED PLAN AND DISCLOSURE STATEMENT

James A. Knauer, Trustee of the estate of Eastern Livestock, LLC ("Debtor"), by this motion ("Motion") requests that the Court continue the hearing, now scheduled for September 7, 2012, on the adequacy of the Trustee's Disclosure Statement<sup>1</sup> to the next omnibus date of October 15, 2012 ("Rescheduled Hearing"), set a new objection deadline on the Disclosure Statement to five business days prior to the Rescheduled Hearing, establish a protocol for the parties to engage in non-binding mediation ("Mediation") on the issue of the reasonableness of the proposed settlement with Fifth Third Bank as contained in the Plan. This Motion arises from the discussions among certain parties occurring during four telephonic conferences held in response to the Court's order to participate in modified Rule 16 conferences at the August 20, 2012 hearing and is supported by the participants. In support of this Motion, the Trustee says:

1. The following parties have agreed to the Mediation including the following: the Trustee, Fifth Third Bank, Superior Livestock Auction, Inc., CPC Livestock, LLC, Bluegrass Stockyards East, LLC, Bluegrass Stockyards, LLC, Bluegrass-Maysville Stockyards, LLC, Bluegrass Stockyards of Richmond, LLC, Blue South Livestock Market, LLC, Bluegrass Stockyards of Campbellsville, LLC (these Bluegrass companies may be collectively referred to

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<sup>1</sup> The Trustee filed his Chapter 11 Plan of Liquidation ("Plan") and his Disclosure Statement with Regard to the Trustee's Chapter 11 Plan of Liquidation ("Disclosure Statement") on July 23, 2012 [Docket Nos. 1255 and 1256].

as the "Bluegrass Entities"), East Tennessee Livestock Center, Inc., Southeast Livestock Exchange, LLC, Moseley Cattle Auction, LLC, Piedmont Livestock Company, Inc., Alton Darnell, The First Bank And Trust, CPC Livestock, LLC; Alabama Livestock Auction, Inc.; Sealy And Sons Livestock, LLP; Athens Stockyard, LLC; Billingsley Auction Sale, Inc.; Tennessee Valley Livestock, LLC; Robert Rawls d/b/a Robert Rawls Livestock; Edwin A. Strickland; Macon Stockyard, Inc.; E4 Cattle Co., LLC; and Edward J. Edens, IV (collectively, the "Mediation Parties"). The Mediation Parties shall participate in person by counsel and with a client representative with authority to bind the client to any agreement reached.

2. In addition to the Mediation Parties, the Trustee invites the state, regional, and national cattlemen's trade associations ("Non-party Associations") to participate in the Mediation. The Trustee is inviting these Non-party Associations to participate in order to hear their perspective and to provide them with neutral access to the issues in the case. The Trustee is not waiving any objection to the party-in-interest or creditor status of the Non-party Associations nor waiving any objection to general or particular standing of the Non-party Associations as to the case or any particular issue in the case. If the Non-party Associations participate in the mediation, they shall agree to be bound by the local rules governing mediation including confidentiality of the process and information. The Mediation Parties and the Non-party Associations who agree to participate may be referred to as the "Participants".

3. Any creditor or party in interest of the Debtor's estate may request and agree to participate in the Mediation as a Participant. Such request shall be made to the Trustee so that the mediator may be informed. In order to limit the potential costs of the Mediation, the Trustee is requesting that the Mediation be limited to two days and be concluded not less than five business days prior to the Rescheduled Hearing.

4. The costs of the mediator, including fees, travel, and reasonable costs will be paid by the estate. It is anticipated that the hours the mediator will incur will exceed 15 hours and so the Trustee will seek approval by the Court for the estate to incur the expected mediation fees and costs. Costs, including attorneys' fees and costs, of the Participants will be the responsibility of those parties. For clarity, the fees and expenses of the Trustee and his counsel with regard to the Mediation are eligible to be included as fees and expenses on fee applications to this Court to be paid by the estate.

5. In order for the Mediation to be efficient and to increase the likelihood of a successful outcome, the Participants may draft and exchange a mediation statement outlining the issues and concerns with the Disclosure Statement and/or Plan including the factual basis and legal reasoning supporting the position of the Participant. The mediation statements would not be filed with the Court but would be delivered to the mediator and exchanged with the other participants in the Mediation. Any Participant that wishes to deliver a second mediation statement only to the mediator without exchanging with the other Participants may do so. The mediation statements will be subject to the confidentiality requirements of the Mediation pursuant to the local rules. The mediation statements to be exchanged should be exchanged not less than 7 days prior to the start of the mediation.

6. The Trustee has asked each of the Participants to propose the names of mediators on or before 10:00 a.m. Friday, September 7, 2012, prior to the next scheduled Rule 16 conference call at 11:30 a.m. If the Participants are not able to agree on a mediator, the Trustee and other Participants will submit proposed names to the Court for the Court to select the Mediator.

7. The mediator should make only the following report to the Court at the conclusion of the Mediation: whether the Mediation was successful or unsuccessful in resolving the issues as to the Disclosure Statement and Plan, and whether any Participant failed to participate in the Mediation in good faith.

8. Except as modified herein, the Mediation should be governed by Local Rule No. B9019-2.

9. The Trustee asks that the Court retain jurisdiction to resolve any procedural disputes that are not able to be resolved by the mediator.

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### **CERTIFICATE OF SERVICE**

I hereby certify that on September 6, 2012, a copy of the foregoing pleading was filed electronically. Notice of this filing will be sent to the following parties through the Court's Electronic Case Filing System. Parties may access this filing through the Court's system.

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